

Dated: June 8, 1995.

**John Calhoun Wells,**

*Director.*

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## FEDERAL RESERVE SYSTEM

### Bank South Corporation, Notice to engage de novo in certain nonbanking activities

Bank South Corporation, Atlanta, Georgia (Applicant), has filed notice pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.21 of the Board's Regulation Y (12 CFR 225.21(a)(2)), to engage *de novo* through Bank South Securities Corporation, Atlanta, Georgia (Company), a subsidiary of Applicant, in underwriting, to a limited extent, certain "private ownership" industrial development revenue bonds, which are issued for the provision of the following governmental services: water facilities, sewer facilities, solid waste disposal facilities, electric energy and gas facilities, and local district heating or cooling facilities. Applicant previously has received Board approval to engage through Company in, among other things, underwriting and dealing in municipal revenue bonds pursuant to the prudential limitations and other conditions set forth in *Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) as modified by *Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989). *Bank South Corporation*, 79 Federal Reserve Bulletin 716 (1993) ("Bank South").

Applicant also has requested limited relief from a condition in *Bank South* to allow Company to underwrite certain unrated municipal revenue bonds. Applicant has committed that Company will comply with the limitations and conditions previously relied on by the Board (*Letter Interpreting Section 20 Orders*, 81 Federal Reserve Bulletin 198 (1995)) except that Applicant proposes that any single issue of unrated municipal revenue bonds underwritten by Company will not exceed \$10 million.

Among the conditions to which Applicant is subject pursuant to *Bank South* is that any industrial development bonds underwritten by Company will be limited to "public ownership" industrial development bonds (i.e., those tax exempt bonds where the issuer, or the governmental

unit on behalf of which the bonds are issued, is the sole owner, for federal income tax purposes, of the financed facility). Applicant is now seeking approval to engage through Company in underwriting "private ownership" industrial development revenue bonds issued for the provision of the governmental services noted above, pursuant to the same prudential limitations and other conditions that Applicant agreed to in *Bank South*.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

Applicant maintains that the Board previously has determined that underwriting private ownership industrial development bonds to a limited extent is closely related to banking. *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), as modified by Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order). Applicant has stated, however that it will conduct the activity using the methods and procedures, and

subject to the prudential limitations to which it agreed in *Bank South*. This includes the Board's 10 percent revenue limitation on such activities, and for this reason, Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activity by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In this regard, Applicant believes that "private ownership" industrial development bonds issued for projects that provide the governmental services listed above are substantially the same from a risk analysis standpoint as "public ownership" industrial development bonds. Applicant notes that the revenue streams that pay debt service in the case of both types of bonds are derived from fees collected for providing services traditionally provided by governmental entities or through a contract between a private company and a governmental entity. Accordingly, Applicant believes that the prudential limitations and other conditions to which it is subject pursuant to *Bank South* are adequate to mitigate any potential adverse effects that may arise from the proposed activity. Applicant also believes that approval of this proposal will promote competition and enable Company to provide a wider range of services and added convenience to its customers.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 30, 1995. Any request for a hearing on this